SUPREME COURT, U. S.

JAN 2 1968

JOHN F. DAVIS, CLERK

No. 64

In the

Supreme Court of the United States

OCTOBER TERM, 1967

UNITED ARTISTS CORPORATION,

Appellant,

v.

CITY OF DALLAS,

Appellee.

APPELLEE'S BRIEF IN ANSWER TO BRIEF SUBMITTED BY THE AUTHORS LEAGUE OF AMERICA, AMICUS CURIAE

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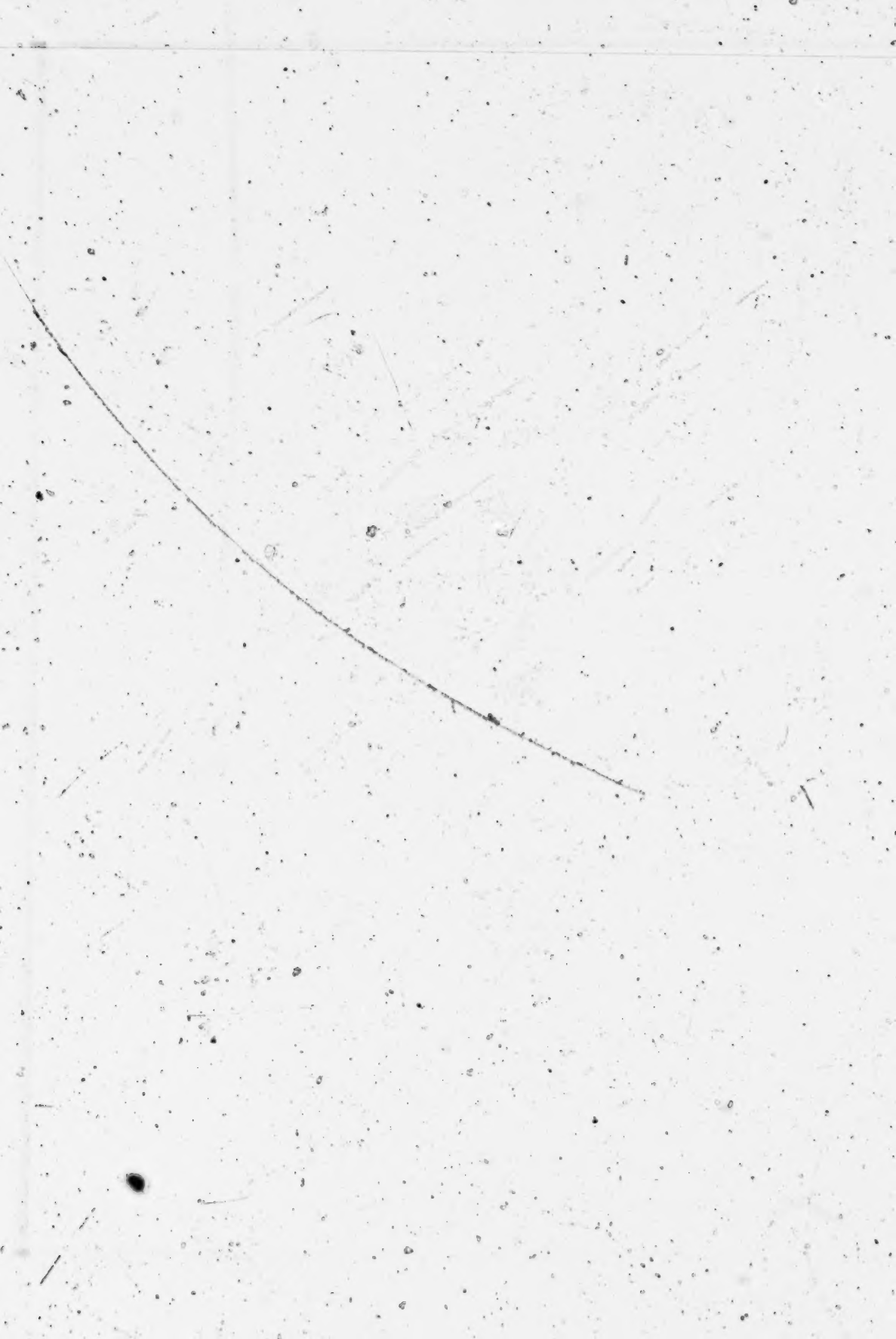

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POINT ONE

A local ordinance regulating the exhibition of a motion picture does not violate its producer's constitutional freedoms of speech and press and the right of due process.

This Honorable Court on several occasions has held that the right of free speech is not absolute at all times under all circumstances. *Chaplinsky v. State of New Hampshire*, 315 U.S. 568; *Near v. State of Minnesota* ex rel. Olson,

283 U.S. 697. It has even pointed the way for the enactment of an Ordinance such as the Dallas Motion Picture Classification Ordinance in the case of *Jacobellis v. Ohio*, 378 U.S. 184.

Yet the Amicus Curiae herein has emphatically contended to this Court that the City of Dallas' Ordinance is per se unconstitutional. It has based its contention on the theory that the onerous burdens of compliance with such an ordinance, its restraint by the Board's classification, and the financial burden of defense to defend the right of free speech will deny the producer of a motion picture his constitutional right to exhibit the same.

Under this approach it would seem that motion pictures must therefore not be questioned as to whether they are obscene, even though this Court has held obscene material not to be protected by the First Amendment. Similarly, there could be no legal remedy for an individual who has been libeled by a motion picture. The so-called "threat" of several lawsuits being brought against the producer if he did not accept an adverse classification of a particular motion picture, obviously could not be any more burdensome or restrictive in nature than the threat of lawsuits being filed against the producer when the question of the motion picture being obscene or libelous is at hand.

The Amicus Curiae, in quoting from the case of *Time, Inc. v. Hill*, 385 U.S. 374 to support its proposition that restraint on freedom of speech can be imposed by the threat of expense of defending one's constitutional rights, failed to point out that this Court did not declare the

particular State Statute involved unconstituional. Moreover, the case did not advocate the elimination of lawsuits when an individual had a cause of action under the Statute. It merely changed the burden of proof, as was done in these kinds of cases in *Freedman v. Maryland*, 380 U.S. 51.

It was stated that the same causal relationship and restrictive effect upon the producer's constitutional rights existed under the Dallas Ordinance as it did in the case of *Bantam Books v. Sullivan*, 372 U.S. 58. However, the Amicus Curiae failed to point out that the restrictive regulations attempted to be applied in that case provided for no safeguards against the suppression of constitutionally protected matter. This is not the case under the provisions of the Dallas Motion Picture Classification Ordinance. Section 46A-3 of Ordinance No. 11284, provides for a speedy review and hearing concerning the classification of a motion picture by the Board. Section 46A-7 of said Ordinance sets up a prompt final judicial determination as to whether such motion picture is "suitable for young persons" or "not suitable for young persons".

The Dallas Motion Picture Classification Ordinance neither restricts the circulation, distribution or exhibition of any motion picture, nor does it infringe upon the rights of children and adults to view any motion picture. The producer is not prohibited from exhibiting any of his pictures within the city limits of the City of Dallas nor is he required to cut or delete any part of his film. No child is denied the right to view a motion picture classified as "not suitable for young persons". Only those under the age

of 16 years are required to be accompanied by a parent, guardian, husband or wife.

The contention that a "not suitable for young persons" label impairs the producer's right to have it exhibited to adult audiences for the reasons of fear of risking community pressures and that adults may accept the label as evidence of immorality which would keep them from seeing the picture, is untenable. The motion picture industry has in the past of its own accord labeled certain movies as for "adults only" or "suggested for mature audiences". Such action does not lend to the proposition that "labels" impair or restrict the rights of the producers.

This Court has had full opportunity to declare that control of movies by local ordinance contravened the Constitution because of the burden of complying with each, but it has not done so. *Times Film Corp. v. Chicago*, 365 U.S. 43. In *Burstyn v. Wilson*, 343 U.S. 495, the Court said that movies came within the provisions of the First Amendment, but stated that there was a "* * * permissible scope of community control, * * *" (P. 502).

POINT TWO

The ordinance does not fail to provide adequate notice and right of defense to the producer.

Amicus Curiae complains that the producer's and exhibitor's rights under the First and Fourteenth Amendments have been violated because the Dallas Ordinance does not give them notice of an adverse classification thereby denying their right of defense in litigation concerning

a particular motion picture. Of course, the distributor, United Artists Corporation, in this case, is a party to this lawsuit and has been since this suit was instituted at the trial court level. It should also be noted that this particular motion picture "Viva Maria" is a foreign produced film and United Artists Corporation had exclusive distribution rights. Thus in light of these facts, how can it be said that this party had no notice of the adverse classification or was denied the right to defend against said classification?

Notice to the exhibitor as provided by the Dallas Ordinance is notice to the producer and distributor. The producer, distributor and exhibitor of a particular motion picture all have common interests in the same by virtue of a contractual arrangement. (Tr. 146) Each is an agent or partner with the other and therefore each would have notice as to an adverse classification of that particular movie.

Again, the Amicus Curiae speaks of the financial burden of administrative proceedings and Court actions produced by the Dallas Ordinance, but now as to the exhibitor. It appears to the Appellee that the contentions expressed are for the right to make profit rather than the right of free speech. Furthermore, if it is true that the exhibitor is exposed to social pressures to the extent that the same may lead him to accept adverse classifications, then why do the producers and distributors by their own actions require an exhibitor to designate certain motion pictures as "for adults only", or "suggested for mature audiences"?

The contentions of the Amicus Curiae if upheld, would mean that the protection of the interests of our children

in this nation should yield to the profit making schemes and plans of private enterprise.

The Amicus Curiae complains that an exhibitor who maintains a local business may not as avidly protect its constitutional rights as it would like him to do. It is to be noted that of the several cases tried in Dallas County, the Authors League of America, Inc., has never yet tried to intervene to protect its rights. It comes at a late date claiming to have been injured. It cites the case of *Zeitlin v. Arnebergh*, 59 C. 2d 901, 383 P. 2d 152. That case pointed out that if one individual was afraid to face public scorn that another would be ready to step in and take his place. The same thing was pointed out in the case of *Roth v. United States*, 354 U.S. 476, in which the Petitioner was convicted or pleaded guilty in six criminal proceedings involving the dissemination of obscene literature. Actually, what Amicus Curiae is complaining of is loss of profits and no more.

POINT THREE

The ordinance provides the procedural safeguards required by the First and Fourteenth Amendments.

The contention that the Dallas Ordinance is void of procedural safeguards required by the First and Fourteenth Amendments, is completely unfounded. The Dallas Ordinance was patterned after the guide line for procedural

safeguards set out in the *Freedman v. Maryland* case, *supra*. It provides:

> (a) That an application for the classification of a motion picture must be approved or disapproved within five days from the date it is submitted to the Board, otherwise the proposed classification is approved;
>
> (b) A notice of non-acceptance by the exhibitor shows his dissatisfaction with the classification and intent not to comply therewith;
>
> (c) If the exhibitor shows a motion picture without classifying it as decided by the Board, a judicial proceeding must still be instigated in a court of proper jurisdiction;
>
> (d) The burden of proof and providing a prompt, speedy judicial review is upon the Board.

At the same time that the Amicus Curiae is complaining of the lack of procedural safeguards, it is complaining of the speed with which the processes are administered.

In fact, on page 14 of its brief, the Amicus Curiae admits that these pictures classified as "not suitable" were "pictures intended for an adult audience."

Similarly, the argument that the Dallas Ordinance poses a "formidable deterrent upon the exhibitor" by imposing liability for admission of children under a specific age is untenable. Section 46A-4 provides that an exhibitor must "knowingly" sell or permit a young person to view the exhibition of any film classified "not suitable for young per-

sons" before any judicial action may be taken. The "considerable burden" as contended, is not placed upon the exhibitor, but rather upon the Motion Picture Classification Board and the City of Dallas. With such provisions, it seems ridiculous to the Appellee herein that the burden of preserving evidence and the risks of inadvertently admitting children under sixteen is too great and therefore a serious restraint on pictures intended for an adult audience. The ordinance requires the exhibitor to be reasonable, and nothing more.

POINT FOUR

The ordinance is not unconstitutional as a restriction upon the exhibition of motion pictures protected by the First Amendment.

The gist of the argument of Amicus Curiae under Point Four is that it wants no standard applied to movies being shown to young people under the age of sixteen, other than the standards of "hard core pornography" which is applied to an adult. It then suggests that the Ordinance must more explicitly define what is obscene than have the Courts. In other words, the argument simply states that it wants to traffic in pornography less than hard-core and line its pockets with the profits therefrom, regardless of the effect it might have on the individual young person. To apply the same standards to the young person as to the adult would leave its hands free, and tie the hands of the local community so that it could not, under any circumstances, protect the public

interest. Certainly this Court is not prepared to extend the doctrine of the First Amendment to such outer extremes.

This Court, and other Courts throughout the land, have had no problem in requiring those in business to distinguish between an adult and a young person in many situations. To be required to do so in this situation is not a new theory. It is not a new burden that business has not borne before and adequately so. Therefore, it creates no standard beyond a reasonable one.

Actually Amicus Curiae throughout its argument is complaining not only of the vagueness of the Dallas Ordinance, but is complaining of the definition of obscenity as used by this Court in its writing. It states that not only can it not understand what is meant by the Dallas Ordinance, but it does not think that the *Roth* definition of obscenity is precise enough to give it a clear guide line. In essence, it desires no guide line, no restrictions and no restraints.

This Court has stated in *United States v. Petrillo*, 322 U.S. 1:

> "* * * but the Constitution does not require impossible standards. The language here challenged conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. The Constitution requires no more." (pages 7-8)

We respectfully submit that the Dallas Motion Picture Classification Ordinance is not unconstitutional in that it does not violate the rights and freedoms of the producers or exhibitors of motion pictures. It neither seeks to prohibit nor unconstitutionally restrict the exhibition of a pro-

ducer's work product. It only seeks to protect the immature youth from those protrayals and depictions which would be harmful to a child's well being. It is true that there are other factors that influence a child. Just because other factors injure, is no reason to refuse to control this one. The State provides many safeguards to protect the child. Why not this one?

CONCLUSION

For the reasons and arguments propounded above, we respectfully submit that the Judgment in this case be affirmed.

Respectfully submitted,

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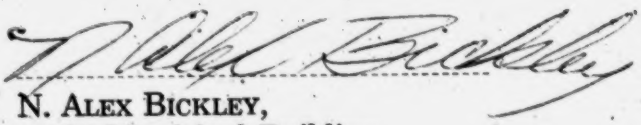
CERTIFICATE OF SERVICE

A copy of this Brief in Response to Brief of Amicus Curiae has been served upon Mr. Dan McElroy and Mr. Paul Carrington, attorneys for Appellant-Intervenor, United Artists Corporation, by delivering same to them in their offices located at 1900 Mercantile Dallas Building, Dallas, Texas, and to Mr. Grover Hartt, Jr., and Mr. Edwin Tobolowsky, attorneys for Appellant, Interstate Circuit, Inc., by delivering the same to them at their offices located at 3525 Southland Center, Dallas, Texas; and to Mr. Irwin Karp, 120 Broadway, New York, New York, 10005, Attorney for The Authors League of America, Inc., Amicus Curiae, by depositing same in the United States Mail; and to Mr. Osmond K. Frankel, 120 Broadway, New York, N. Y., 10005; Mr. Edward J. Ennis, 8 West 40th Street, New York, N. Y., 10018; Mr. Melvin L. Wulf and Mr. Alan H. Levine, 156 Fifth Avenue, New York, N. Y., 10010, and Mr. Fred O. Weldon, Jr., 1601 National Bankers Life Building, Dallas, Texas, 75201, Attorneys for Amici Curiae, The American Civil Liberties Union, New York Civil Liberties Union, and Texas Civil Liberties Union, by depositing same in the United States Mail.



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